

FEDERAL BUREAU OF INVESTIGATION

Form No. 1

THIS CASE ORIGINATED AT

HOUSTON

FILE NO. 120-81

REPORT MADE AT <p style="text-align: center;">HOUSTON, TEXAS</p>	DATE WHEN MADE <p style="text-align: center;">6-22-48</p>	PERIOD FOR WHICH MADE <p style="text-align: center;">6-22-48</p>	REPORT MADE BY <p style="text-align: center;">WILLARD BOONE ep</p>
TITLE <p>ANCHOR PETROLEUM COMPANY -vs- UNITED STATES Civil Action No. 674, United States District Court, Southern District of Texas</p>			CHARACTER OF CASE <p style="text-align: center;">FEDERAL TORT CLAIMS ACT</p>

SYNOPSIS OF FACTS:

Civil suit against the United States filed 4-1-48 by Plaintiff, a corporation organized under the laws of the State of Oklahoma for damages of \$50,000.00 as a result of the damage to four railroad tank cars during the fires and explosions at Texas City, Texas on 4-16,17-47. Suit is brought for the use and benefit of Plaintiff's pledgees and cestui que trust insurers, American Equitable Assurance Company of New York and The Union Tank Car Company. Plaintiff's petition alleges thirty-three acts of negligence, omissions, or wilful acts on the part of Defendant's agents, officers, employees and servants in manufacturing and causing to be shipped through the Port of Texas City Fertilizer Grade Ammonium Nitrate which is claimed to be the material which exploded. Petition further requests the Court to apply the rule of res ipsa loquitur or in the alternative to find that the Defendant wilfully and knowingly caused to be placed in proximity of Plaintiff's property dangerous material with explosive characteristics, with knowledge of such characteristics or reason to have such knowledge with exercise of due diligence. Government's answer filed 6-3-48 containing motions to dismiss, general and specific denials and alleging intervening acts of negligence by other parties were the proximate cause of Plaintiff's damages.

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EX-4

DETAILS:

This investigation is predicated upon a letter from the Honorable BRIAN S. ODEM, United States Attorney for the Southern District of Texas, Houston, Texas, dated January 30, 1948, requesting that an investigation be conducted as to the civil suits filed against the United States Government arising out of the Texas City Disaster which occurred on April 16, 17, 1947.

INTRODUCTION

As set forth in the report of Special Agent JAMES A. FINLEY, dated April 24, 1948 at Houston, Texas in case entitled THE TEXAS CITY TERMINAL RAILWAY COMPANY -vs- UNITED STATES, CIVIL DOCKET #CA-535, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS; FEDERAL TORT CLAIMS ACT, at 9:12 A.M. on April 16, 1947, the SS Grandcamp, a vessel of French registry, which was moored at Pier "O" at Texas City, Texas, exploded causing widespread destruction and loss of life. This vessel was being loaded with Fertilizer Grade Ammonium Nitrate (hereinafter referred to as FGAN) and at the time of the explosion approximately 2,300 tons of FGAN had been loaded into Holds Two and Four. It is this material which allegedly exploded at Texas City.

At approximately 8:00 A.M. on April 16, 1947, nineteen longshoremen boarded the SS Grandcamp and opened the hatches at which time no fire was noted. About ten minutes later, smoke was discovered in the No. Four deep hold. Efforts were made by the longshoremen to extinguish the fire with jugs of drinking water without success and the longshoremen called for a fire hose to be lowered into the hold. This was done but before water was applied to the blaze, orders were issued to remove the hose, batten the hatches, and apply steam to the hold in an attempt to smother the blaze and avoid cargo damage. The longshoremen were ordered off the ship and the Texas City Fire Department was summoned for the purpose of extinguishing the fire. The fire steadily increased in intensity and, as mentioned above, the ship exploded at approximately 9:12 A.M. on April 16, 1947.

The SS High Flyer, a vessel of American registry owned by Lykes Brothers Steamship Company, was also moored in the immediate vicinity, and this ship contained a cargo of approximately 960 tons of FGAN in Hold No. 3. Other materials, including sulphur, were also loaded aboard the SS High Flyer. After the explosion of the SS Grandcamp, which blew away the hatch covers of the SS High Flyer, no fire was observed aboard the latter ship for several hours. The SS High Flyer exploded at approximately 1:10 A.M. on April 17, 1947 with little loss of life but great property damage.

Investigation has shown that the FGAN involved at Texas City was manufactured at United States Government facilities of the Nebraska Ordnance Plant, Fremont, Nebraska; Cornhusker Ordnance Plant, Grand Island, Nebraska; and Iowa Ordnance Plant, Burlington, Iowa, all operated by the Emergency Export Corporation, a subsidiary of the Spencer Chemical Company, Kansas City, Missouri, on a cost-plus contract with the United States Government. The FGAN was being manufactured for the Government which sold it to Lion Oil Company, Eldorado, Arkansas, in accordance with the provisions of a replacement contract entered into in July, 1946. Shipment of the material was on Government Bills of Lading from the respective Ordnance Plants to Texas City. A sales contract existed between the Lion Oil Company and the Walsen Consolidated Mercantile Company, New York City, through which the latter company sought to acquire title to the FGAN on behalf of the French Supply Council. Technical examinations of control samples of the FGAN involved in the explosion at Texas City have shown that the material conformed to specifications with very minor deviations.

INITIAL LEGAL PROCEEDINGS

The records of the United States District Court Clerk's Office, Galveston, Texas, reflect that on April 1, 1948, Civil Action No. 674 was filed against the United States in the United States District Court, Southern District of Texas, by the Anchor Petroleum Company, a corporation, through its attorneys, AUSTIN Y. BRYAN, JR., and DAVID BLANDK, Houston, Texas, for damages of \$50,000.00 as a result of damage or destruction of four railroad tank cars during the fires and explosions at Texas City, Texas on April 16,17, 1947. The petition sets forth that this action is brought under the Federal Tort Claims Act, 28 USCA 921.

The petition also sets forth that as of April 16, 1947 it was the owner and/or possessor and/or lessee of the following tank cars:

ANPX 2010

UTLX 96149

UTLX 96250

UTLX 96189

and as such was absolutely liable as an insurer for the return of such tank cars to the various original owners. The petition states that consequently Plaintiff is also suing for the use and benefit of its pledgees and cestui que trust insurers, American Equitable Assurance Company of New York and The Union Tank Car Company.

1. Summary of Plaintiff's Petition:

The Plaintiff's petition is summarized briefly as follows: The word "plaintiffs" is used herein to designate the Anchor Petroleum Company.

- Paragraph I. The Anchor Petroleum Company is a corporation duly organized and existing under the laws of the State of Oklahoma with a permit to do business in the State of Texas. Plaintiffs, as of April 16, 1947, were the possessors or lessors of the above described tank cars and are absolutely liable to the original owners for the return thereof.
- Paragraph II. Plaintiffs charge that a large and multiple number of Defendant's negligent acts and omissions and wrongful acts occurred singly, jointly and in sequence within the Galveston Division of the Southern District of Texas, and Plaintiffs bring this action under the Federal Tort Claims Act, 28 USCA 921 in this district because of the Court's jurisdiction.
- Paragraph III. Plaintiffs charge as a proximate result of an explosion on the SS Grandcamp on April 16, 1947 and subsequent fires and explosions, Plaintiffs' property was generally damaged or destroyed to the extent set forth on the schedule.
- Paragraph IV. Plaintiffs allege the fire and explosion originated in a cargo of explosive and dangerous materials being loaded on the SS Grandcamp, namely, ammonium nitrate.
- Paragraph V. Plaintiffs assert this material on the SS Grandcamp, in warehouses at Texas City and in adjacent boxcars, was a highly dangerous and inherently dangerous explosive manufactured by the Defendant, its agents, servants, representatives, and employees at the Cornhusker Ordnance Plant, Nebraska Ordnance Plant, and Iowa Ordnance Plant. Plaintiffs assert the manufacture, processing, testing, preparing, sacking and shipping of the ammonium nitrate was in the direct, sole and exclusive control of Defendant; and that Defendant was negligent in each and all of the operations but inasmuch as Defendant was in sole direct control, Plaintiffs are unable to allege with particularity those negligent acts and omissions of which the Defendant is guilty. Plaintiffs allege that failure of the Defendant to adopt methods, etc., such as a reasonably prudent man would have adopted proximately caused the Plaintiffs' damages. By reason thereof, Plaintiffs state that the rule of res ipsa loquitur should be applied.
- Paragraph VI. Plaintiffs, in the alternative to Paragraph V., charge Defendant with the manufacture, storage, processing assembling, sacking, and shipping of ammonium nitrate and additional elements added thereto, resulting in the ammonium nitrate shipped to Texas City becoming a highly dangerous explosive

and instrumentality and material, the characteristics of which Defendant knew or should have known by exercise of due diligence to be inherently dangerous to people dealing with same. Because of this, Plaintiffs charge Defendant is absolutely liable to Plaintiffs for all their damages. Plaintiffs charge this material was placed by Defendant in proximity of Plaintiffs' property knowingly and wilfully by Defendant, its agents, servants, etc. Plaintiffs contend that the explosions and fire at Texas City were of such magnitude as to amount to a national disaster worthy of judicial notice.

Paragraph VII. Plaintiffs notify Defendant they will not be confined to specific acts of negligence hereinafter alternatively charge, but expect to rely also on the general allegations of fire, explosion, negligence, defectiveness and neglect as well as res ipsa loquitur.

Paragraph VIII. Plaintiffs allege their damages proximately flowed from and were caused by the negligent and wrongful acts and omissions of Defendant as follows:

1. Manufacturing under the direction of the Commanding Officer of the U. S. Army Ordnance Department and his superiors and subordinates, etc., excess military liquid ammonium nitrate into so-called commercial fertilizer by graining such liquid ammonium nitrate and introducing a wax of petroleum, rosin, and paraffin, and an inert material known as kaolin, resulting in a highly combustible, unstable explosive and inherently dangerous material. Plaintiffs charge Defendants with knowledge such material would be handled by persons not informed of the nature of the material.
2. Defendant, its agents, etc., shipped via common carrier this material with knowledge that it would be handled by uninformed persons, and that Defendant knew or should have known by the exercise of due care that ammonium nitrate grained from surplus military supplies was inherently dangerous.
3. Wilfully and knowingly introducing into the proximity of people and property this dangerous commodity without having tested and determined the inherently dangerous characteristics such as a reasonably prudent operator would have done.

4. Knowingly and wilfully selecting Texas City, Texas as an export point, knowing of the presence of concentrated industrial facilities.
5. Failure to give notice as to the nature of the dangerous material to persons handling same, as well as special instructions as to the most approved method of controlling fires and explosions.
6. Failure to post special guards to supervise loading and unloading.
7. Failure to post guards and other persons who understood fire control methods as to ammonium nitrate.
8. Failure to promulgate regulations isolating points of export from heavily developed commercial areas.
9. Failure to post watchmen and guards to control loading and unloading of ammonium nitrate from boxcars to warehouses to ships on April 16, 17, 1947.
10. Failure to have a tug available to move ships in event of fire or explosion.
11. Failure to take steps as a reasonably prudent shipper to determine that docks and ships were equipped with necessary knowledge and firefighting equipment to meet all possibilities.
12. Creating a common nuisance by shipping an inherently dangerous material into Texas City.
13. Knowingly and wilfully making shipments of ammonium nitrate to Texas City without first determining that adequate knowledge and equipment for fire control, etc., were available.
14. Failing to exercise the degree of care commensurate with the risk and danger naturally expected to arise in shipping ammonium nitrate to Texas City.
15. Wilfully mislabeling as "Fertilizer".
16. Failure to issue specific instructions in event of fire or explosion within the area or the material itself.

17. Bagging FGAN at temperatures not less than 200° F. in paper bags laminated with asphalt, itself a highly combustible material.
18. Packaging ammonium nitrate in paper bags with asphalt laminated layers which in common knowledge permitted increased combustion and explosibility.
19. Failing through research division of the U. S. Government to determine by reasonable diligence the inherently dangerous characteristics of ammonium nitrate grained into fertilizer.
20. Failing to act as a reasonably prudent operator would have done through the Interstate Commerce Commission in being advised of advances of science respecting proper methods of packaging and labeling ammonium nitrate.
21. Failure to give warning of the explosive nature of ammonium nitrate to persons handling same or in vicinity thereof, including Plaintiffs.
22. Ordering, directing, permitting, and acquiescing in the large concentration of approximately 2,300 tons of ammonium nitrate at Texas City.
23. Knowingly, purposely, and wilfully through the Ordnance Department shipping via common carrier the ammonium nitrate at Texas City, knowing such material was explosive and dangerous, and yet so delivering such material under false and deceptive markings and falsely giving an invoice and shipping order without informing as to the true character of the material prior to delivery to the common carriers in violation of Title 18, Sec. 385, USCA.
24. Knowingly tendering through the Ordnance Department under Government Bill of Lading for shipment by rail a dangerous material described as fertilizer in violation of Section 417 of Interstate Commerce Commission regulations.
25. Knowingly violating Sec. 146.05 (a) (b) (c) of U. S. Coast Guard regulations on "Explosives and Other Dangerous Articles on Board Vessels" by tendering such ammonium nitrate for shipment with knowledge it was to be exported on ships at Texas City without ascertaining the ships had been notified of the characteristics of the shipment.

26. Knowingly continuing a dangerous and obsolete manufacturing process which had been abandoned by foreign manufacturers.
27. Wilfully continuing to use asphalt laminated paper bags to package this dangerous material after foreign manufacturers had abandoned this method in favor of metal or wooden barrels.
28. Permitting loading of SS High Flyer with ammonium nitrate, knowing this vessel could not be moved under its own power, and by so loading and causing the ammonium nitrate to be confined in the hold of said ship, tending to speed up and enlarge the explosive and inherently dangerous character of said material.
29. Permitting loading of SS High Flyer with ammonium nitrate, knowing the harbor area at Texas City to be congested with industrial facilities with careless and reckless disregard for safety and protection of life and property.
30. Failure to give proper notice and warning of the inherently dangerous character of the material despite Defendant's knowledge from war experience. Charges that during 1942 or 1943 Defendant sought and received a memorandum setting forth characteristics of such material and how to control and use same.
31. Charges that on April 16,17, 1947, Defendant controlled, regulated, supervised, and governed the harbor area and had the nondelegable duty to establish and supervise regulations for safe and proper transportation, unloading storage, and stowing aboard ship of inherently dangerous material and Defendant failed to discharge such duty.

32. Failure to enforce and apply the provisions of Sec. 170, Title 46, USCA.
33. Failure to comply with Sec. 39,40 of Title 46, USCA, which Plaintiffs charge constitutes negligence as a matter of law.

Plaintiffs charge that if any of the above acts and omissions be less than negligence, they then charge each act to be a wrongful act or omission, and that each was committed within the scope of employment of each employee, servant, agent or representative of Defendant.

Paragraph IX. Plaintiffs allege damage and/or destruction as follows:

As a proximate result of the acts above Plaintiffs have suffered the total loss of the tank cars which had a reasonable cash market value of \$30,000.00.

A special and direct and proximate loss of profits because of inability to replace and substitute other tank cars to the extent of \$20,000.00.

Paragraph X. Plaintiffs sue in their own behalf and also for the use and benefit of their pledgees and cestui que trust insurers, American Equitable Assurance Company of New York and The Union Tank Car Company.

Paragraph XI. Plaintiffs reserve rights to file claims against joint and/or several tort-feasors subject only to admiralty jurisdiction of the court.

2. Summary of Government's Answer:

On June 8, 1948, the Government's answer was filed by BRIAN S. ODEM, United States Attorney for the Southern District of Texas, and GEORGE O'BRIEN JOHN, Special Assistant to the Attorney General, which is summarized briefly as follows:

- First defense: Plea for more definite statement.
- Second defense: Motion to dismiss for failure to state a claim.
- Third defense: Motion to dismiss on grounds of failure to show that the laws of the place where the alleged acts of negligence and omissions occurred would permit recovery, and failure to show where such acts occurred and identity of persons committing them.
- Fourth defense: Motion to dismiss on grounds action brought in wrong district because Plaintiffs are not residents of this district and acts complained of did not occur in this district.
- Fifth defense: Plaintiffs are not real parties in interest.
- Sixth defense: Answer on Merits:
- I. Defendant is without knowledge to form a belief as to the truth of Paragraph I of the petition and therefore denies all allegations contained therein.
 - II. Denial of all allegations of Paragraph II. Special denial that the Court has jurisdiction of this cause.
 - III. Denial of all allegations in Paragraph III.
 - IV. Denial of all allegations in Paragraph IV.
 - V. General denial of all allegations of Paragraph V of petition. Specifically denies material loaded on SS Grandcamp was ammonium nitrate, that such material is inherently dangerous, and that rule of res ipsa loquitur is applicable.
 - VI. General denial of all allegations in Paragraph VI.

- VII. No answer required as to Paragraph VII; however, Defendant gives notice it will object to introduction of evidence as to any act or omission not specially pleaded.
- VIII. General denial of all allegations of Paragraph VIII of petition.
- IX. General denial as to Paragraph IX. Specific denial Plaintiffs were damaged in amount claimed.
- X. Defendant denies capacity of Anchor Petroleum Company to sue as trustee for the use and benefit of its alleged pledgees and cestui que trust insurers.
- XI. No answer required as to Paragraph XI of petition; however, Defendant waives no right to require Plaintiffs to assert each claim to recovery. Specifically denies Defendant is a tort-feasor subject to any jurisdiction, admiralty, or otherwise of this Court.

Seventh defense: Denial that acts of negligence or omissions on the part of Defendant's officers, agents, employees or servants occurred, but that if same did occur, such acts were performed while exercising due care; or in the alternative said claim is exempt from operation of the Federal Tort Claims Act because such acts were performed in exercise of discretionary functions or duties.

Eighth defense: Denial that any act of negligence or omission occurred, but if any such act did occur and constituted negligence, it was not the proximate cause of the alleged damage.

Ninth defense: Alleged damages were the result of unavoidable accident.

Tenth defense: Denial that any acts of negligence or omissions on the part of Defendant's officers, agents, etc., occurred but that if such acts did occur, they were not the proximate cause of the alleged injury. Alleges intervening acts of negligence on the part of others which were the direct, sole, exclusive and proximate cause of the fire and explosion aboard the SS Grandcamp and resulting damage, as follows:

- A. Republic of France or the Compagnie Generale Transatlantique through their agents, employees, officers and servants:
 - 1. Use of improper dunnage.
 - 2. Failure to clean and inspect cargo holds.
 - 3. Permitting loading without inspection.
 - 4. Failure to require proper rebagging of broken sacks.
 - 5. Failure to properly inspect loading operations.
 - 6. Failure to enforce non-smoking regulations.
 - 7. Failure to employ proper fire-fighting methods in Hold No. 4 of the SS-Grandcamp.
 - 8. Failure to maintain guards aboard said ship.
 - 9. Failure to post "no smoking" signs in English.
- B. A. D. Suderman Stevedoring Company, a partnership, employed by Agents of the Compagnie Generale Transatlantique:
 - 1. Commencing loading operations before receiving a report from the Underwriter's inspector.
 - 2. Permitting promiscuous smoking on the deck and in the hold of the SS Grandcamp by longshoremen.
 - 3. Failure to enforce smoking regulations.
 - 4. Permitting longshoremen to load broken bags of FGAN.
 - 5. Failure to have broken bags of FGAN rebagged.
 - 6. Permitting improper disposal of torn FGAN sacks.
 - 7. Failure to employ proper fire-fighting methods in Hold No. 4 of the SS Grandcamp.

8. Directing use of steam instead of water to extinguish fire in Hold No. 4 of the SS Grandcamp.
9. Ordering No. 4 Hatch battened down, resulting in inordinate increase of temperature.

C. Members of International Longshoremen's Union, Local 636:

1. Promiscuous smoking on deck and in holds of said vessel.
2. Smoking aboard said vessel in violation of regulations including those promulgated by their national organization.
3. Improper disposal of paper bags and loose FGAN.
4. Failure to rebag broken sacks of FGAN.
5. Improper loading of broken sacks of FGAN.
6. Failure to apply a sufficient quantity of water in Hold No. 4.

D. Lykes Brothers Steamship Company, through its agents, officers, employees and servants with respect to the SS High Flyer:

1. Failure to remove the SS High Flyer from the danger zone.
2. Failure to maintain machinery of the SS High Flyer in proper working condition.
3. Failure to attempt repairs on the SS High Flyer upon discovery of fire aboard the SS Grandcamp.
4. Failure to employ tugs to move the SS High Flyer upon discovery of fire on the SS Grandcamp.
5. Failure to employ tugs to move the SS High Flyer after the explosion.
6. Permitting the SS High Flyer to be abandoned.
7. Failure to maintain personnel to man fire equipment.
8. Permitting fire to start after SS High Flyer abandoned.
9. Failure to reboard the SS High Flyer to extinguish fire.
10. Failure to move SS High Flyer after discovery of fire.
11. Failure to take precautions to prevent explosion of SS High Flyer.
12. Failure to exercise the administrative duty of Port Captain which by custom had been exercised by Lykes Brothers Steamship Company as to the general care and protection of the harbor area.

E. Texas City Terminal Railway Company with respect to fire and explosion aboard both ships.

1. Failure to enforce municipal ordinances.
2. Failure to enforce smoking regulations in warehouse and Pier "O".
3. Failure to maintain fire-fighting equipment and personnel.
4. Failure to maintain adequate guard system in dock area.
5. Failure to have fixed responsibility for administration of the port area.
6. Failure to effect the moving of the SS Grandcamp after discovery of the fire.
7. Failure to effect moving of the SS High Flyer.
8. Failure to warn individuals of the material and cargo aboard the SS High Flyer after the explosion on the SS Grandcamp.

F. Texas City, Texas - A Municipal Corporation, through its agents, officers, employees and servants with respect to both ships.

1. Failure to enforce governmental functions and authority over port and harbor facilities.
2. Failure to maintain a Captain of the Port.

The answer alleges that the above acts of negligence constituted new and independent causes which could not be reasonably foreseen by the Defendant and that even though the Defendant was guilty of acts of negligence, which is denied, such acts were not the direct or proximate cause of Plaintiff's damage but were remote acts totally unconnected with the acts of negligence of the parties alleged above.

- P E N D I N G I N A C T I V E -

LEADS

THE HOUSTON DIVISION

AT GALVESTON, TEXAS

Will follow and report action of the United States District Court in this matter. It will be noted that at the present time, it is believed this case will not be adjudicated prior to January, 1949. In the interim, this case is being placed in a pending inactive status.

FEDERAL BUREAU OF INVESTIGATION

Form No. 1

THIS CASE ORIGINATED AT **HOUSTON**

FILE NO.

REPORT MADE AT HOUSTON, TEXAS	DATE WHEN MADE 12/6/51	PERIOD FOR WHICH MADE 8/3/50; 10/2; 11/16/51	REPORT MADE BY WILLIAM P. CONLEY ca
TITLE "CHANGED" ANCHOR PETROLEUM COMPANY; AMERICAN EQUITABLE ASSURANCE COMPANY OF NEW YORK; UNION TANK CAR COMPANY vs. UNITED STATES, CIVIL ACTION No. 674, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF TEXAS			CHARACTER OF CASE FEDERAL TORT CLAIMS ACT

SYNOPSIS OF FACTS:

On 7/21/48 this suit was consolidated with other Texas City Disaster suits for trial on sole issue of Government liability. On 5/4/50, Court ruled United States liable. Decision currently under appeal, U.S. Fifth Circuit Court. Records of General Adjustment Bureau, Tulsa, Oklahoma, indicate plaintiffs have been reimbursed by railroad carriers for three of the four tank cars, which are basis of this suit. Anchor Petroleum Company has claim of \$6,980.05 against Texas and New Orleans Railroad Company for destruction of fourth tank car. Plaintiffs' attorneys have furnished no information to Government relative to this suit. Railroad Carriers, Gulf, Colorado and Santa Fe Railway Co., International Great Northern Railroad Company and T & NO Railroad Company, have filed suit against the United States to recover Texas City Disaster loss.

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mak 10-1

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12/29/61
[Signature]

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DETAILS:

The title of this case has been changed to indicate that on April 6, 1950, a Petition of Intervention was filed in this suit by the American Equitable Assurance Company of New York and the Union Tank Car Company.

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APPROVED AND FORWARDED: <i>A. F. Lorton, Jr.</i>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN THESE SPACES	
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DETAILS: This investigation is predicated upon receipt of Departmental memorandum dated May 18, 1950, requesting that the Federal Bureau of Investigation undertake the investigation of claims arising out of the Texas City Disaster of April 16-17, 1947, to establish the validity of the claims and to collect sufficient information upon which to base a determination of the amount of damages sustained by each claimant.

COURT ACTION

By order of the Honorable T. M. KENNERLY, Judge, U. S. District Court, Southern District of Texas, on July 21, 1948, this suit was consolidated with other suits filed as a result of the Texas City Explosion, to be tried on the matter of determining whether the Government was liable for damages incurred as a result of such explosion.

Following trial to determine the matter of liability on May 4, 1950, Judge KENNERLY entered his formal judgment in which he found the Government liable. Notice of appeal from the decision of the U. S. District Court was given by Government counsel, and as of the date of the preparation of this report the appeal is being perfected to be argued before the U. S. Circuit Court of Appeals, Fifth Circuit, New Orleans, Louisiana December 7, 1951.

DAMAGES

The following investigation was conducted by the Oklahoma City Office of the Federal Bureau of Investigation:

AT TULSA, OKLAHOMA

Mr. JOSEPH S. BOTTLER, General Adjustment Bureau, Hunt Building, furnished the information set forth below from files in his possession.

Tank Car ANPX 2010

Original Cost	-	\$7,450.00
Depreciation	-	<u>1,024.38</u>
Book value at time of loss	-	\$6,425.62

Mr. BOTTLER advised that this car was built on September 19, 1942 and was a Class 105A-300W Propane Tank Car. This car was depreciated at the rate of three per cent for a period of four years and seven

months. The light weight of this car was 66,900 pounds. Mr. BOTTLER advised that this car was owned by the Anchor Petroleum Company. He further advised that the American Equitable Assurance Company had paid the Anchor Petroleum Company \$6,000.00 for the loss of this car between November 26, 1947 and May 20, 1949. The Anchor Petroleum Company received \$6,275.35 from the Gulf, Colorado and Santa Fe Railway Company for the loss of this car. The Anchor Petroleum Company also received \$150.27 for the scrap value of this car.

Under the terms of their insurance policy, the Anchor Petroleum Company refunded the \$6,000.00 which they had received from the American Equitable Assurance Company to that Company.

In summarizing the information set forth above, it is noted that the payment which the American Petroleum Company received from the Gulf, Colorado and Santa Fe Railway Company, plus the scrap value of the Tank Car, equals the book value at the time of the loss. It is also noted that the American Equitable Assurance Company was fully repaid for the settlement they made with the Anchor Petroleum Company; consequently, the only Company which appears to have suffered any loss due to the destruction of the above car, is the Gulf, Colorado and Santa Fe Railway Company.

Tank Car UTLX 96149

Original Cost	-	\$8,140.00
Depreciation	-	<u>1,119.25</u>
Book value at time of loss	-	\$7,020.75

Mr. BOTTLER said that this car was owned by the Union Tank Car Company and leased by the Anchor Petroleum Company. This car was built in September, 1942 and was a Class 105A-300 Propane Tank Car, with a light weight of 69,900 pounds. It had been depreciated at the rate of three per cent for four years and seven months. Mr. BOTTLER advised that the Anchor Petroleum Company had received \$6,000.00 from the American Equitable Assurance Company, and had paid the Union Tank Car Company \$7020.75 for the loss of this car. Mr. BOTTLER said that the Anchor Petroleum had also received \$156.34 for the scrap value of this car.

Tank Car UTLX 96250

Original Cost	-	\$8,140.00
Depreciation	-	<u>1,221.00</u>
Book value at time of loss		6,919.00

Mr. BOTTLER advised that this car was built in April, 1942, and was a Class 105A-300 Propane Tank Car with a light weight of 72,900 pounds, and had been depreciated at the rate of three per cent for five years. He said that the Anchor Petroleum Company had paid the Union Tank Car Company \$6919.00 for the loss of this car and had received \$6,000.00 from the American Equitable Assurance Company.

Mr. BOTTLER further advised that the International Great Northern Railroad Company had paid the Anchor Petroleum Company \$13,929.75 for the loss of Tank Cars UTLX 96149 and UTLX 96250, and the Anchor Petroleum Company had repaid the American Equitable Assurance Company the \$12,000.00 which it had received from the Insurance Company for the loss of these two cars.

It is noted that the book value of Tank Car UTLX 96149 at the time of its destruction \$7020.75, plus the book value of Tank Car UTLX - 96250 at the same time \$6919.00, equals \$13,939.75. It appears that the International Great Northern Railroad Company intended to pay the Anchor Petroleum Company the book value at the time of loss for the two Tank Cars referred to immediately above, and a ten dollar error occurred somewhere in the negotiation, resulting in a net payment to the Anchor Petroleum of \$13,929.75.

It appears that as a result of the destruction of Tank Cars UTLX 96149 and UTLX 96250, the Anchor Petroleum Company was fully reimbursed for their book value less the ten dollar error referred to above. In addition, the Anchor Petroleum Company received \$156.34 for the scrap value of Tank Car UTLX 96149.

It appears that the American Equitable Assurance Company of New York was fully reimbursed for its payments to the Anchor Petroleum Company and suffered no loss as a result of the destruction of these two Tank Cars.

Tank Car UTLX 96189

Original Cost	-	\$8,140.00
Depreciation	-	<u>1,159.95</u>
Book value at time of loss	-	6,980.05

Mr. BOTTLER advised that the Anchor Petroleum Company leased this car from the Union Tank Car Company. This car was built in July, 1942 and was a Class 105A-300 Propane Tank Car, light weight 73,100 pounds.

This car had been depreciated at the rate of three per cent for a period of four years and nine months. This depreciation, as well as all that set out previously, was based on rates established by the American Association of Railroads.

Mr. BOTTLEER stated that the Anchor Petroleum Company had paid the Union Tank Car Company the book value of this car and the Anchor Petroleum Company had received \$6,000.00 from their insurance carrier. The Anchor Petroleum Company has a claim against the Texas and New Orleans Railroad Company for \$6980.05 for the destruction of this car, and has not been paid as yet.

Mr. BOTTLEER said that when the Anchor Petroleum Company is reimbursed by the Railroad Carriers, they will then reimburse the insurance company for the \$6,000.00 received on account of the loss of this car. Although Mr. BOTTLEER did not specifically identify the Company providing insurance coverage, it appears that it was probably the American Equitable Assurance Company of New York.

Mr. BOTTLEER said that the Anchor Petroleum Company realized \$163.22 from the scraping of this car. He said that this Tank Car was on the property of the Monsanto Chemical Company, Texas City, Texas, at the time it was destroyed.

In connection with the investigation of the suit against the Government, entitled Texas and New Orleans Railroad Company, vs., United States, Civil Action No. 601, United States District Court, Southern District of Texas, Special Agent JOHN C. CONNORS (A), contacted Mr. A. A. PRATS, Freight Claims Agent, Texas and New Orleans Railroad Company, 913 Franklin Street, Houston, Texas. The Law Firm of BAKER, BOTTS, ANDREWS and PARISH, Houston, Texas, representing the Texas and New Orleans Railroad Company, had previously given permission to the Houston Office of the Federal Bureau of Investigation to contact their client.

Mr. PRATS made available, from his records, data pertaining to damage to railroad cars on Texas and New Orleans Railroad Company Lines in Texas City, Texas on April 16, 17, 1947. These records indicated that Tank Car UTLX 96189, with a depreciated value of \$6,980.05, had been a total loss and no salvage was obtained. Mr. PRATS stated that this car was standing unloaded at the time of the explosion and suffered considerable damage.

Mr. D. A. SINGLETON, Assistant to the Section Superintendent, Motive, Power and Equipment Section, Texas and New Orleans Railroad Company, 1400 Fulton Street, Houston, Texas, advised Special Agent JOHN C. CONNORS

that Tank Car UTLX 96189 had come from the Anchor Petroleum Company of Tulsa, Oklahoma, and was included in the claim of the Texas and New Orleans Railroad Company against the United States in anticipation of a claim against them by the Anchor Petroleum Company. He said that the value of the car, included in this suit, was arrived at in accordance with the depreciation schedules established by the American Association of Railroads.

The following information was furnished to Special Agent CONNORS by Mr. FRANK J. HEILING, Assistant to the General Manager of the Texas City Terminal Railway Company, Mainland Building, Texas City, Texas. This information is set out below in schedule form and indicates the last recorded movements of the Tank Cars which are the basis of this suit, according to Mr. HEILING's records.

CAR #	DATE IN	LOAD	DATE OUT
ANPX 2010	4/13	Liquified Petroleum Gas	not indicated
UTLX96149	4/14	Liquified Petroleum Gas	not indicated
UTLX96250	4/14	Liquified Petroleum Gas	not indicated
UTLX96189	4/12	Propane	not indicated

Mr. HEILING advised that the information set forth above indicates the dates that the listed Tank Cars were received in the Texas City Terminal dock area immediately prior to the disaster. He said that he did not have any records which would indicate the exact location of each of these cars at the time of the explosion.

ATTITUDE OF PLAINTIFFS' ATTORNEYS

Attorneys AUSTIN Y. BRYAN, Jr., and DAVID BLAND, Niels Esperson Building, Houston, Texas, have advised this office that they would furnish no information to the Government relative to Texas City Disaster suits represented by them, unless the Government would agree to stipulate or arbitrate the amount of damages in each of these suits within a period of six months from the time Attorneys BRYAN and BLAND made the information in their possession available. Consequently, no information has been received by this office from Attorneys BRYAN and BLAND relative to the damages suffered by the plaintiffs in this suit and no attempts have been made to contact the plaintiffs.

DUPLICATE SUITS

In Civil Action No. 817, filed in the United States District Court, Southern District of Texas, the Gulf, Colorado and Santa Fe Railway Company has filed suit against the United States to recover \$97,595.48 as a result of loss and damage to freight and equipment, occurring at Texas City, Texas, as a result of the explosion of April 16, 1947. Attorney PRESTON SHIRLEY, Galveston, Texas, representing the plaintiff in this suit, made available the records of the Gulf, Colorado and Santa Fe Railway Company, supporting this claim, to Special Agent JOHN C. CONNORS (A).

These records indicate that the plaintiff had made a payment of \$7608.36 on January 10, 1949, recorded on Voucher Number 89940 of the Atchinson, Topeka and Santa Fe Railroad, on account of the destruction of Car Number ANPX2010. It is noted that apparently in this suit, the Gulf, Colorado and Santa Fe Railway Company is seeking to recover \$7608.30 for the destruction of Tank Car ANPX2010, whereas, according to information received from the General Adjustment Bureau of Tulsa, Oklahoma, set forth above, the Anchor Petroleum Company had received only \$6,275.35 from the Gulf, Colorado and Santa Fe Railway Company for the loss of this car.

In Civil Action No. 820, filed in the United States District Court, Southern District of Texas, entitled GUY A. THOMPSON, Trustee, International Great Northern Railroad Company, debtor, et al, the plaintiffs are seeking to recoup one million dollars from the United States as a result of damage to property owned by the plaintiffs and in their custody and control, resulting from the Texas City Disaster.

The Law Firm of Hutcheson, Talicaferro, and Hutcheson, Houston, Texas, who represent the plaintiffs in this suit, have advised the Government that they would not compile any detail in support of their suit until after a decision is rendered on the appeal by the Government in the Fifth Circuit Court of Appeals, New Orleans, Louisiana, from the decision in favor of the plaintiffs in the United States District Court, Southern District of Texas. The above law firm has advised that in the event the decision on the appeal is in the plaintiffs' favor, they will proceed to prepare a "Proof File", which will be made available to the Federal Bureau of Investigation. It appears that possibly the International Great Northern Railroad Company may attempt to recoup the payment of \$13,929.75, which it made to the Anchor Petroleum Company in this suit.

In Civil Action No. 601, filed in the United States District Court, Southern District of Texas, entitled Texas and New Orleans Railroad Company; vs. United States, the plaintiff is seeking to recoup \$100,000. from the United States as a result of damage to twenty freight cars and their contents, as a result of the explosion at Texas City, Texas on April 16, 1947. As mentioned above, the Texas and New Orleans Railroad have

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included \$6980.05 in this suit for the destruction of Tank Car UTLX-96189. Representatives of the Texas and New Orleans Railroad have advised that as yet the Anchor Petroleum Company has not been paid for the book value of this car, but the liability is recognized and it is anticipated that this payment will be made.

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ADMINISTRATIVE PAGE

LEADS

THE HOUSTON DIVISION

AT GALVESTON, TEXAS

Will report the final settlement of this suit in the U. S. District Court, Southern District of Texas, Galveston Division.

REFERENCE:

Report of SA WILLARD BOONE dated 6/22/48 at Houston
Bureau letter dated 5/26/50, transmitting Departmental
memorandum, dated 5/18/50.